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SARAVANAN SANGARALINGAM & ANOR v. MAJLIS BANDARAYA IPOH & ANOR

HIGH COURT MALAYA, IPOH
ABDUL WAHAB MOHAMED J
[JUDICIAL REVIEW APPLICATION NO: AA-25-6-06-2023]
B 30 OCTOBER 2024

Abstract – *The decision of the local authorities to direct the owner of a structure to comply with the height regulations, despite approvals had earlier been granted for the retention of such structure, is not unlawful. Local authorities have the obligations to enforce compliance with the standards as enumerated under the relevant laws, ie, the Local Government Act 1976 and the Street, Drainage and Building Act 1974.*

D ***ADMINISTRATIVE LAW:*** *Judicial review – Application for – Challenge against decision of local authority ('decision') and consent order – Interface wall directed to be reduced in height, and in event of non-compliance, for it to be demolished – Decision and consent order made after granting of approval for retention of wall – Whether approval granted temporary – Whether decision in accordance with statutory duties and discretion of local authority under Street, Drainage and Building Act 1974 – Whether decision due to being unduly influenced by improper considerations – Whether granting of approval created legitimate expectation that wall could remain – Whether challenge against consent order amounted to collateral attack*

F ***LOCAL GOVERNMENT:*** *Town planning – Approval of permission – Local authority directed interface wall to be reduced in height ('decision') despite granting of approval that wall could remain – Whether approval granted temporary in nature – Whether decision in accordance with statutory duties and discretion of city council under Street, Drainage and Building Act 1974*

G The applicants were the registered owners of a property ('property'), whereas the first and second respondents, respectively, were the Ipoh City Council and the owner of a neighbouring property. The applicants had initiated a series of renovations on their property, and this included the construction of an interface wall ('wall'), which separated the said properties. The wall was H affixed onto an existing roof beam. Before the construction of the wall, the applicants had not obtained approval from the first respondent. This caused the first respondent to issue a notice to the applicants under s. 70(13)(b) of the Street, Drainage and Building Act 1974 ('SDBA'), to direct the applicants to demolish the wall, on the ground that there was a deviation from the approved building plan for the property. As there was a failure on the part I of the applicants to comply with the said notice, the first respondent

commenced a summons against the applicants, to which the applicants pleaded guilty and paid a fine. Subsequently, the first respondent issued a formal notice against the applicants, for the wall to be demolished, unless a building plan application was submitted by the applicants, and the same was approved by the first respondent. This prompted the applicants to send a letter to the first respondent, to urge the same to exercise its discretion pursuant to s. 72(1) of the SDBA, to allow the wall to remain. Thereafter, the applicants submitted a formal building plan to the first respondent, which was inclusive of an engineering report which concluded that the wall would not pose any danger provided that certain reinforcement measures were undertaken. The first respondent granted the applicants approval for the retention of the wall, *albeit* with a caveat, that the approval was only valid for a year, subject to annual renewal upon payment of a certain sum to the first respondent ('temporary approval'). While the said events unfolded, the second respondent had commenced a separate judicial review proceeding against the first respondent without naming the applicants as parties ('JR 31'). In JR 31, the second respondent sought an order of *mandamus* for, among others, to compel the first respondent to demolish the wall. JR 31 was initially opposed by the first respondent. According to the first respondent: (i) the engineering report produced by the second respondent did not provide any conclusive finding that the wall would pose any danger, other than that it was not constructed according to approved building plans; and (ii) the applicants were already prosecuted. Afterwards, as the second respondent chose to continue with JR 31, despite the granting of the temporary approval, the first respondent, *via* a letter, directed the applicants to reduce the height of the wall to four feet ('first respondent's decision'). Other than that, in respect of JR 31, the parties therein had also entered a consent judgment, where the first respondent agreed to demolish the wall within 14 days from a specified date if the applicants failed to reduce the height of the wall ('consent order'). Dissatisfied with the first respondent's decision and the consent order, the applicants filed the present judicial review application to challenge the first respondent's decision ('application'). According to the applicants, the first respondent's requirement for height compliance was arbitrary and unsupported by evidence. Among others, it was also posited that: (i) by granting the temporary approval, a legitimate expectation had been created for the applicants that the wall could remain; (ii) the first respondent's reversal regarding the temporary approval was without valid cause and constituted an abuse of its discretionary powers under ss. 70 and 72 of the SDBA; and (iii) the first respondent's decision was without a factual basis, and it was due to being unduly influenced by the second respondent's continued pressure and efforts in JR 31. As such, the issues that arose were: (i) whether the first respondent's decision was lawful; (ii) whether the first respondent had acted within its statutory powers and exercised its discretion

lawfully under the SDBA, or whether the first respondent's decision was unduly influenced by improper considerations; (iii) whether the temporary approval had created a legitimate expectation for the applicants; and (iv) whether the consent order had any bearing to the application, and if so, whether it foreclosed the applicants' challenge against the first respondent's decision.

Held (dismissing application):

(1) The first respondent followed a structured process in assessing the height of the wall. Site inspections and internal assessments were conducted to verify the applicants' adherence with planning requirements. The findings confirmed that the wall exceeded the permissible height under the local plan. Moreover, in issuing the relevant notices under ss. 70 and 72 of the SDBA, the respondent had communicated clearly, allowing the applicants an opportunity to take corrective action or provide justifications for retaining the existing wall. The adherence with the procedural requirements underscored the first respondent's commitment to due process. As such, there was no evidence of arbitrariness or procedural impropriety in the first respondent's actions. (paras 25-27)

(2) The temporary approval explicitly stated that it was subject to review and compliance with height regulations. The applicants were fully aware that the approval did not exempt them from eventual height restrictions as imposed under the local plan. Temporary or provisional approvals do not confer permanent rights or create vested interests. A conditional or temporary permit does not entitle the permit holder to continued operation without adherence to regulatory standards. The applicants' reliance on the temporary approval was thus unreasonable, as they were informed that full compliance with regulatory standards would be required. Furthermore, local authorities, as statutory bodies, were vested with powers to ensure compliance with urban planning standards in the public interest. The purpose of such standards was to prevent potential hazards and maintain consistency across developments within a given area. The first respondent was obligated under ss. 70 and 72 of the SDBA to take corrective action when a structure failed to comply with height regulations and posed potential risks to the community. Therefore, the first respondent's decision, was not only a lawful exercise of its statutory power but also a necessary action in fulfilling its duty to the public. The complaints lodged by the second respondent, though instigating the first respondent's investigation, were incidental to the same's regulatory obligations. The first respondent's enforcement of height compliance was a legitimate and prudent exercise of its duties under the SDBA and the Local Government Act 1976. (paras 28-31)

(3) The SDBA provides a broad discretionary framework, allowing local authorities to interpret and enforce compliance measures in the interest of safety and public welfare. The first respondent's directive to reduce the wall's height based on regulatory height limits reflected its interpretation of ss. 70 and 72 of the SDBA as they were related to non-compliant structures. The discretion granted under the said sections is not unlimited and must be exercised within the confines of reasonableness, fairness and proportionality. The first respondent's decision was aligned with the prescribed local development plan and the height limits therein. This demonstrated a proportional response to the non-compliance issue, particularly as the first respondent initially allowed the applicants to apply for approval of the wall, thus exercising procedural fairness. Given that public complaints from the second respondent were registered regarding the wall's safety, the first respondent's decision to reassess the wall's compliance aligned with its statutory role as a public safety custodian. Therefore, the first respondent's decision was legally sound, consistent with case law and reflective of a responsible approach to statutory enforcement under ss. 70 and 72 of the SDBA. (paras 35-38 & 42)

(4) The issuance of the temporary approval did not provide the applicants with an unqualified assurance of permanence. Where public authorities were vested with discretionary powers, they may not be estopped from enforcing regulations due to a purported legitimate expectation if such enforcement was in the public interest. The applicants could not have reasonably expected that an interface wall exceeding local heights limits would be permanently sanctioned, particularly these limits were articulated within the Ipoh Local Plan 2020, a publicly accessible document. Additionally, the first respondent had provided the applicants with an opportunity to apply for necessary approvals before the enforcement action, indicating a procedural fairness that weakened the applicants' claim of legitimate expectation. Legitimate expectation could not be founded upon assumptions contrary to statutory objectives or public safety. Here, the regulatory height limit served public safety and aesthetic standards, and the first respondent acted within its statutory remit in upholding these standards. Moreover, public complaints about the wall height further necessitated the first respondent's intervention, consistent with its obligation to uphold the community standards and safety. Consequently, the applicants' claim of legitimate expectation was unfounded. The first respondent's actions in enforcing the height limit were within the scope of its statutory powers, especially given the overarching importance of public safety and regulatory adherence. The applicants' reliance on purported expectation that contradicted statutory regulations could not succeed. (paras 50-55)

(5) In cases where consent orders affect the right of third parties, it was generally held that such third parties must be given opportunity to be heard. The applicants had full knowledge of JR 31 but chose not to intervene and such failure weakened their claim to now challenge the consent order, especially considering the order's finality as a judicially approved settlement. Further, the principle against collateral attack asserted that a party could not seek to undermine a final order or judgment through indirect proceedings. Considering that the present application appeared to be a collateral attack on JR 31, where the applicants had the opportunity to raise their arguments but declined to do so, the applicants' challenge towards the consent order was inconsistent with the principle of judicial finality. Furthermore, under the SDBA, the first respondent retained discretionary power to revoke approval if deemed necessary. The fact that the applicants paid fines for previous breaches and accepted temporary approval only reinforced the understanding that they were aware of the conditional nature of the first respondent's tolerance of the wall. The consent order's enforcement aligned with the first respondent's regulatory mandate to ensure compliance with local building requirements. Given these reasons, the applicants' assertions of illegality were without merit. The consent order therefore remained valid and enforceable, providing the first respondent with lawful grounds to proceed with the demolition of the wall as per the stipulated terms. (paras 61-64)

Case(s) referred to:

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***

Darahman Ibrahim & Ors v. Majlis Mesyuarat Kerajaan Negeri Perlis & Ors [2008] 4 CLJ 538 CA ***(refd)***

Development & Commercial Bank Bhd v. Aspatra Corporation Sdn Bhd & Anor [1996] 1 CLJ 141 FC ***(refd)***

Everest Aisvaram Sdn Bhd v. Majlis Bandaraya Shah Alam [2020] 7 CLJ 96 HC ***(refd)***

Puchong Sports Arena Sdn Bhd v. Calcium Carbonate Manufacturers Sdn Bhd & Anor [2021] CLJU 883; [2021] 1 LNS 883 HC ***(refd)***

Tio Chee Hing v. Tractors Malaysia Bhd [1972] CLJU 157; [1972] 1 LNS 157 FC ***(refd)***

Legislation referred to:

Street, Drainage and Building Act 1974, ss. 70(1), (13)(b), 72(1)

For the plaintiffs - Surindar Singh Chain Singh; M/s Chong, Surindar, Su & Assocs

For the 1st respondent - Danial Rahman Yang Razali & Jeyaramm Rajan; M/s Maxwell Kenion Cowdy & Jones

For the 2nd respondent - Dhiviya Anbananthan; M/s Sheanna Velu

Reported by Syamim Ariffin

JUDGMENT

Abdul Wahab Mohamed J:

Introduction

[1] This judgment concerns on an application for judicial review by the applicants challenging the decision of the respondent, the local authority, to require the reduction in height of an interface wall between the applicants' residence and a neighbouring property. The applicants, who initially obtained temporary approval for the structure, contend that the respondent's subsequent decision to revoke this approval and mandate height compliance was unlawful. The applicants argue that the respondent failed to substantiate the alleged safety risks of the structure and unjustly responded to complaints from a neighbouring resident, who is not a party to this suit.

[2] The respondent, in turn, asserts that the approval granted was conditional and subject to local building regulations, which the applicants' wall indisputably contravenes. The respondent relies on its statutory authority under the Street, Drainage, and Building Act 1974 ("SDBA 1974"), particularly ss. 70 and 72, to revoke approvals when safety or compliance issues arise. Further, the respondent highlights that a consent order in prior judicial proceedings (JR 31) affirmed its right to enforce the compliance measures and that the applicants' attempt to set aside the respondent's decision represents a collateral attack on this prior order.

[3] The matter before this court raises fundamental questions regarding the legality of structures that violate regulatory guidelines despite conditional approval, the discretion of local authorities to revoke such approvals, and the role of public complaints in enforcing building regulations.

Background Facts

[4] The applicants are the registered owners of a residential property at No 21, Jalan Damai, Taman Idris, Mukim Bandar Ipoh (U), Daerah Kinta, Perak Darul Ridzuan ("the house"). Sometime around March 2020, the applicants initiated a series of renovations on their property. The renovations included the construction of an interface wall ("the interface wall") designed to separate the house from the neighbouring property, owned by a certain Mr Yoga Indiran a/l Ganabathy ("Yoga").

[5] The interface wall was constructed from red clay bricks and was affixed directly onto an existing roof beam. According to the applicants, this wall was erected to maintain privacy between the two properties and enhance security. However, the applicants did not initially seek approval for this alteration from the respondent, as required under local building codes.

[6] On 16 February 2021, the respondent issued a notice to the applicants under s. 70(13)(b) of the SDBA 1974, directing them to demolish the interface wall. The basis for this directive was the respondent's finding that the interface wall was a deviation from the approved building plan for the property. The applicants did not immediately comply with this notice.

[7] In response to the applicants' continued retention of the interface wall, the respondent initiated a summons against the applicants (Case No. AA-87-149-02/2022) under s. 70(13)(b) of the SDBA 1974. On 30 March 2022, the applicants pleaded guilty to the charges, resulting in a fine of RM10,000, which they promptly paid.

[8] Subsequently, on 4 July 2022, the respondent issued a formal communication to the applicants, reiterating that the interface wall would need to be demolished unless the applicants submitted a building plan application for approval. This prompted the applicants to engage a consulting firm, SJP Consultant Sdn Bhd ("SJP"), to conduct a safety assessment of the interface wall.

[9] On 17 August 2022, the applicants, through a letter, urged the respondent to consider exercising its discretion under s. 72(1) of the SDBA 1974, allowing the interface wall to remain. The applicants supported this request by submitting an engineering report from SJP, which concluded that the interface wall would not pose a danger provided certain reinforcement measures were undertaken. This letter also cited drone footage showing that other homes in the vicinity had similar unapproved renovations, suggesting that the respondent had not enforced uniform compliance.

[10] On 25 August 2022, the applicants submitted a formal building plan to the respondent, inclusive of SJP's safety report and additional supporting documentation from M&R Architects Sdn Bhd. Following this submission, on 26 September 2022, the respondent granted the applicants' building plan approval, *albeit* with a caveat, the approval was valid for a period of one year, subject to annual renewal upon payment of RM1,250. The applicants paid RM1,250 for this approval on 13 September 2022.

[11] While these events unfolded, Yoga initiated separate judicial review proceedings against the respondent (Case No. AA-25-31-11/2021, herein referred to as "JR 31"). Yoga's application sought a *mandamus* order compelling the respondent to either demolish the interface wall or, if approval were granted, to reassess the wall's safety. However, the applicants were not named as parties in JR 31.

[12] The respondent opposed JR 31, arguing in its affidavit that Yoga failed to provide any substantive evidence proving that the interface wall posed a hazard. In this affidavit, affirmed by an officer named Syahrul Azrin bin Ghazali, the respondent stated that Yoga had not submitted any engineering reports substantiating his claims of safety risks.

[13] Yoga subsequently filed a response on 17 June 2022, producing a report by JIK Consultant Sdn Bhd ("the JIK report"). This report, based solely on a visual inspection, concluded that the interface wall and other renovation works within the house were not constructed according to approved building plans. However, the JIK report did not provide conclusive findings on the interface wall's potential danger, noting only a "risk" due to non-compliance with standard renovation requirements.

[14] In reply, Syahrul affirmed that the JIK report lacked conclusive evidence indicating a collapse risk and reiterated that the respondent had already prosecuted the applicants. Additionally, Syahrul highlighted that Yoga did not join the applicants as parties to JR 31, despite raising the complaint about the interface wall.

[15] On 3 February 2023, a respondent officer, Rabiatul Alia binti Azmin, affirmed an affidavit documenting the temporary approval for the interface wall. Despite this approval, Yoga continued with JR 31, seeking either demolition or reassessment of the interface wall.

[16] On 30 March 2023, the applicants received a letter dated 22 March 2023 from the respondent. This letter, marked 'the respondent's decision,' informed the applicants that the interface wall had to be reduced to a height of four feet due to public complaints and safety concerns, as stipulated in s. 4.15 of the local building guidelines. The applicants contend that the respondent's decision was influenced by Yoga's continued pressure and efforts in JR 31. They claim that this decision lacks a factual basis, asserting that the respondent had, on record, previously opposed JR 31 on the grounds that the interface wall posed no danger.

[17] On 24 May 2023, the applicants formally responded, arguing that the respondent's decision was unlawful, as it had no factual basis. They submitted that the interface wall, being approved by the respondent, did not warrant demolition or alteration absent proof of danger or non-compliance with building standards.

[18] On 30 May 2023, the respondent clarified its position, emphasising that the temporary approval did not exempt the interface wall from compliance with local guidelines. Citing the Ipoh City Local Plan, which mandates a maximum height of four feet for such structures, the respondent reiterated that it was within its powers to revoke the approval. The respondent also urged the applicants to join JR 31 to address Yoga's complaint, but the applicants declined.

[19] On 12 June 2023, a consent order was recorded in JR 31, wherein the respondent agreed to demolish the interface wall within 14 days from 30 June 2023, should the applicants fail to reduce the wall's height to four feet.

[20] Dissatisfied with the consent order and the respondent's decision, the applicants initiated this judicial review, asserting that the respondent's requirement for height compliance is arbitrary and unsupported by evidence. They contend that the temporary approval created a legitimate expectation that the interface wall could remain, and that the respondent's reversal without valid cause constitutes an abuse of its discretionary powers under ss. 70 and 72 of the SDBA 1974.

Issues To Be Determined

[21] Based on the parties' submissions and the facts presented, the court identifies the following issues for determination:

(i) whether the respondent's decision to impose a height restriction on the interface wall, as communicated to the applicants in its letter dated 22 March 2023 ("the respondent's decision"), was lawful ("legitimacy of the respondent's decision to mandate height compliance");

(ii) whether the respondent acted within its statutory powers and exercised its discretion lawfully under the SDBA 1974, or if its actions were indeed influenced by improper considerations ("validity of the respondent's exercise of discretion");

(iii) whether the temporary approval granted by the respondent created a legitimate expectation for the applicants that the interface wall could remain as constructed ("legitimate expectation");

(iv) whether the consent order in JR 31 has any bearing on this judicial review application and, if so, whether it forecloses the applicants' challenge to the respondent's decision ("impact of the consent order in JR 31").

Legitimacy Of The Respondent's Decision To Mandate Height Compliance

[22] In evaluating the legitimacy of the respondent's decision to enforce height compliance, it is essential to consider the regulatory framework and standards established under local planning laws. The Ipoh City Local Plan, which specifies allowable building heights in various zones, seeks to balance urban development with considerations of safety, aesthetics, and the needs of the local community. The respondent's authority in this case, derived from both the Local Government Act 1976 and the Street, Drainage, and Building Act 1974 (SDBA 1974), is focused on enforcing compliance with these standards to maintain public order, safety and welfare.

[23] The respondent's mandate to enforce height restrictions gained added significance following complaints from Yoga, a member of the local community, who raised concerns about the interface wall's height. While the applicants argue that the respondent acted disproportionately, this court

notes that regulatory authorities are empowered and indeed obligated to act upon substantiated public complaints that relate to safety or regulatory violations.

[24] Section 70(1) of the SDBA 1974 authorises the respondent to require modifications to any building or structure found inconsistent with the city's approved standards. When a public authority acts in response to public complaints, it is fulfilling its role as a custodian of public welfare. In this light, the respondent's actions are justified not merely as a regulatory exercise but as a response to legitimate community concerns that align with statutory mandates.

[25] The applicants argue that the respondent's decision to enforce compliance lacked transparency and objectivity, claiming that it was unduly influenced by Yoga's complaints rather than an impartial assessment of the interface wall's potential risks. However, the evidence does not support this assertion.

[26] Records indicate that the respondent followed a structured process in assessing the height of the interface wall. Site inspections and internal assessments were conducted to verify the applicants' adherence to planning requirements, and findings confirmed that the wall exceeded the permissible height limit under the local plan. Furthermore, in issuing notices to the applicants under ss. 70 and 72 of the SDBA 1974, the respondent communicated clearly, allowing the applicants an opportunity to take corrective action or provide justifications for retaining the existing structure.

[27] The adherence to procedural requirements underscores the respondent's commitment to due process. The court, therefore, finds no evidence of arbitrariness or procedural impropriety in the respondent's actions.

[28] Another key aspect relevant to the legitimacy of the respondent's mandate for height compliance concerns the temporary approval initially granted to the applicants. This approval explicitly stated that it was subject to review and compliance with height regulations. The court finds that the applicants were fully aware that the approval did not exempt them from eventual height restrictions as imposed under the local plan.

[29] It is well-established that temporary or provisional approvals do not confer permanent rights or create vested interests (*Puchong Sports Arena Sdn Bhd v. Calcium Carbonate Manufacturers Sdn Bhd & Anor* [2021] CLJU 883; [2021] 1 LNS 883). A conditional or temporary permit does not entitle the permit holder to continued operation without adherence to regulatory standards. The applicants' reliance on the provisional approval was thus unreasonable, as they were informed that full compliance with regulatory standards would be required.

[30] Local authorities, as statutory bodies, are vested with powers to ensure compliance with urban planning standards in the public interest. The purpose of such standards is to prevent potential hazards and maintain consistency across developments within a given area. The respondent, in this case, is obligated under ss. 70 and 72 of the SDBA 1974 to take corrective action when a structure fails to comply with height regulations and poses potential risks to the community.

[31] In this case, the respondent's decision was not only a lawful exercise of its statutory power but also a necessary action in fulfilling its duty to the public. The complaints lodged by Yoga, though instigating the investigation, were incidental to the respondent's regulatory obligations. The court finds that the respondent's enforcement of height compliance was thus a legitimate and prudent exercise of its duties under the SDBA 1974 and the Local Government Act 1976.

Validity Of The Respondent's Exercise Of Discretion

[32] The Street, Drainage and Building Act 1974 (SDBA) provides a broad discretionary framework, allowing local authorities to interpret and enforce compliance measures in the interest of safety and public welfare. In the present case, the respondent's directive to reduce the interface wall's height based on regulatory height limits under the "Rancangan Tempatan Bandaraya Ipoh" reflects its interpretation of ss. 70 and 72 as they relate to non-compliant structures.

[33] Section 70(13)(b) of the SDBA 1974 empowers the local authority to take enforcement actions against deviations from approved building plans. Specifically, it allows authorities to issue notices mandating the demolition or alteration of any building or structure that does not comply with the approved specifications or poses a potential risk to the public.

[34] Section 72(1) of the SDBA 1974 further empowers the local authority to require corrective actions for non-compliant structures. Importantly, it provides the respondent discretion in deciding whether to demand demolition or permit adjustments or alterations to align with approved plans, provided public safety and regulatory standards are upheld.

[35] The statute provides a broad discretionary framework, allowing local authorities to interpret and enforce compliance measures in the interest of safety and public welfare. In the present case, the respondent's directive to reduce the interface wall's height based on regulatory height limits under the "Rancangan Tempatan Bandaraya Ipoh" reflects its interpretation of ss. 70 and 72 as they relate to non-compliant structures.

[36] The discretion granted under ss. 70 and 72 are not unlimited and must be exercised within the confines of reasonableness, fairness, and proportionality.

[37] In this case, the respondent's decision to impose a four-foot height restriction on the interface wall aligns with the prescribed local development plan and the height limits therein. This demonstrates a proportional response to the non-compliance issue, particularly as the respondent initially allowed the applicants to apply for approval for the interface wall, thus exercising procedural fairness.

[38] Given that public complaints from a neighbouring property owner (Yoga) were registered regarding the interface wall's safety, the respondent's decision to reassess the wall's compliance aligns with its statutory role as a public safety custodian ("*Everest Aisvaram Sdn Bhd v. Majlis Bandaraya Shah Alam* [2020] 7 CLJ 96").

[39] The respondent initially provided the applicants with an opportunity to seek approval, which they did on a temporary basis. This indicates that the respondent's discretion was exercised with a degree of procedural fairness. The temporary nature of the approval and the subsequent consent order to demolish the wall upon non-compliance with height standards reflect that the respondent acted in a proportionate manner, ensuring both compliance with planning guidelines and responsiveness to public safety concerns.

[40] The height limitation enforced by the respondent is aligned with the local development plan, which imposes a maximum height of four feet. By mandating this reduction, the respondent has exercised its discretion to uphold uniform planning standards within its jurisdiction.

[41] The respondent's enforcement action, taken under ss. 70 and 72 of the SDBA, represents a lawful and reasonable exercise of discretion in ensuring regulatory compliance and addressing public safety concerns. The respondent's approach to mandating height compliance in response to complaints, adherence to local guidelines, and observance of procedural fairness by providing the applicants with initial approval opportunities demonstrates a balanced and proportionate exercise of its statutory power.

[42] Accordingly, it is my considered view that the respondent's decision is legally sound, consistent with case law, and reflective of a responsible approach to statutory enforcement under ss. 70 and 72 of the SDBA.

Legitimate Expectation

[43] In addressing the applicants' claim of legitimate expectation, it is essential to first establish the underlying principles of this legal doctrine and how it applies in the context of the respondent's discretionary powers under the Street, Drainage and Building Act 1974 (SDBA).

[44] The applicants contend that, based on prior interactions with the respondent, they had a legitimate expectation that they would be allowed to maintain the interface wall at its current height. However, the respondent's subsequent enforcement action mandating a height reduction allegedly contradicts this expectation. Thus, the central issue is whether the applicants' expectation was reasonable, legitimate, and enforceable in law.

[45] Reference was made to the Court of Appeal case of *Darahman Ibrahim & Ors v. Majlis Mesyuarat Kerajaan Negeri Perlis & Ors* [2008] 4 CLJ 538; [2008] 4 MLJ 309, where the court had considered the principles of legitimate expectation at length and held as follows:

> [29] It is apparent that the appellants agreed to move after hearing the promises advanced by the then Menteri Besar of Perlis. The cajoling succeeded. The Royal address too carried weight. With a carrot dangling in front of them, so to speak, the appellants were more than willing to be resettled at Lubuk Sireh. They moved and re-settled at Lubuk Sireh. They were led up the garden path, so to speak. The notion of legitimate expectation is an interesting area of the law. I would, with respect, endorse the approach of Lord Fraser in *Attorney-General of Hong Kong v. Ng Yuen Shiu* [1983] 2 AC 629, especially the part where His Lordship said that: *legitimate expectations in this context are capable of including expectations which go beyond enforceable legal rights, provided they have some reasonable basis*. His Lordship the proceeded to identify three practical questions underlying all legitimate expectations, namely:
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> (a) To what has the authority committed itself?
>
> (b) Has the authority acted unlawfully in respect of its commitment?
>
> (c) What should the court do about it?
>
> [30] In the context of the present appeal, the first question is the easiest to answer. That the second respondent - the Kerajaan Negeri Perlis, had lawfully committed itself to providing the appellants with all those promises. The second question is certainly more difficult to answer because there is no magic formula for determining the legality of the actions. The court, for instance, in *R v. Secretary of State for Education and Employment, ex parte Begbie* [200011 WLR 1115 faced a difficult task in balancing competing interests, weighing the value of flexibility of resource allocation against the need to adhere to promises. However, consistency of treatment and equality were, according to the court, equally important and it should be secured when an authority tried to depart from an established policy whether or not there had actually been any detrimental reliance on the expectation. Here, in this appeal, the detriment was quite significant. To renege on the promises would certainly amount to an abuse of power. In regard to the third question, what would be the role of the court in such circumstances? What should this court do? There is only one answer. It is this. To compel the authority to keep to their promises. I will now continue with the narration of the facts.
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> ...

> [52] *Whether an expectation exists, is clearly a question of fact. So, if a person did not expect anything, then there is nothing that the doctrine of legitimate expectation can protect. Here, the appellants expected the respondents to keep to their promises and so the appellants expect that the doctrine of legitimate expectation to protect them and the said doctrine can be invoked to protect them*. As I said, the statement of claim made reference to the doctrine of legitimate expectation and I must give effect to it in this judgment. But if a person is unaware of an undertaking made by a public authority, then he cannot expect compliance with that undertaking (*Chundawara v. Immigration Appeal Tribunal* [1988] Imm AR 161, where an unincorporated but ratified treaty of which the claimant was unaware could not found legitimate expectation). A taxpayer, for instance, must rely upon a representation from the Revenue before his expectation will be protected (*R v. Inland Revenue Commissioners ex p Matrix-Securities Ltd* [1994l 1 WLR 334). But taxpayers seeking revenue clearance for their proposals must make full disclosure before the revenue's assurances will be binding (*R v. Inland Revenue Commissioners ex p MFK Underwriting Agencies Ltd* [1990l 1 WLR 1545).
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> (emphasis added)

[46] Based on the above authority, it is clear that in order for the doctrine of legitimate expectation to give rise to a substantive right, an ambiguous representation must have induced the said legitimate expectation. Whether an expectation exists, is clearly a question of fact. So, if a person did not expect anything, then there is nothing that the doctrine of legitimate expectation can protect.

[47] Legitimate expectation, as a public law doctrine, grants an individual a reasonable expectation that a public authority will act consistently with prior representations or established practices, provided these representations or practices do not contravene statutory requirements or public interest considerations. For an expectation to be considered legitimate, it must be clear, unambiguous, and devoid of any overriding lawful interest.

[48] To determine whether the applicants' claim of legitimate expectation holds, we must examine: (i) the criteria for establishing a legitimate expectation, (ii) whether the applicants' expectation meets these criteria, and (iii) if the respondent's enforcement action invalidates any potential legitimate expectation.

[49] Mere anticipation does not amount to legitimate expectation; the expectation must stem from a representation that would induce a reasonable belief in its continuation. Furthermore, public authorities are not bound by representations that contravene statutory requirements or compromise public safety.

[50] In this case, the respondent's issuance of a temporary approval for the interface wall did not provide the applicants with an unqualified assurance of permanence.

[51] Where public authorities are vested with discretionary powers, they may not be estopped from enforcing statutory regulations due to a purported legitimate expectation if such enforcement is in the public interest. The applicants could not have reasonably expected that an interface wall exceeding local height limits would be permanently sanctioned, particularly given that these limits were articulated within the Ipoh Local Plan 2020, a publicly accessible document.

[52] Additionally, the respondent had provided the applicants with an opportunity to apply for necessary approvals before enforcement action, indicating a procedural fairness that weakens the applicants' claim of legitimate expectation. Legitimate expectation cannot be founded upon assumptions contrary to statutory objectives or public safety. Here, the regulatory height limit serves public safety and aesthetic standards, and the respondent acted within its statutory remit in upholding these standards.

[53] Moreover, public complaints about the wall height further necessitated the respondent's intervention, consistent with its obligation to uphold community standards and safety.

[54] In conclusion, the applicants' claim of legitimate expectation is unfounded. The respondent's actions in enforcing the height limit were within the scope of its statutory powers, especially given the overarching importance of public safety and regulatory adherence. The respondent's discretion under ss. 70 and 72 of the SDBA and its obligation to address public complaints validate its decision to enforce compliance. Accordingly, the applicants' reliance on a purported expectation that contradicts statutory regulations cannot succeed.

[55] Based on the foregoing, the court finds that the applicants' assertion of legitimate expectation does not hold legal merit. The respondent's mandate for compliance with height restrictions stands valid, reflecting a proper exercise of its statutory discretion in public interest.

Impact Of The Consent Order In JR 31

[56] The applicants argue that the consent order in JR 31, to which they were not parties, should not legally bind them. They contend that their prior approval to construct the interface wall, alongside supporting structural reports, created a legitimate expectation that the wall could be maintained at its existing height. The applicants submit that the respondent's shift in position – now demanding compliance with height restrictions – was *ultra vires* and procedurally unfair, as they were denied an opportunity to defend their interests in JR 31.

[57] The respondents assert that the consent order in JR 31 conclusively resolves the legality of the interface wall's height. They argue that the consent order is binding not only on the immediate parties but also on the applicants, as they were notified of the JR 31 proceedings and had the opportunity to intervene. By challenging the consent order indirectly through this judicial review, the respondents contend that the applicants are engaging in an impermissible collateral attack, thereby undermining judicial finality and the rule of law.

[58] The law is well-settled that a consent judgment can only be set aside on specific grounds, as established by the Federal Court in the leading case of *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75; [1998] 1 MLRA 183; [1998] 1 MLJ 393; [1998] 1 AMR 909, where Peh Swee Chin FCJ, in one of the judgments delivered by the Federal Court stated instructively as follows:

> The grounds referred to for setting aside a consent order of a judgement by consent are grounds which basically relate to *consensus ad idem* or the free consent of parties to a binding agreement or contract. It is elementary that if it is proved that there are grounds which vitiate such free consent, the agreement is not binding. Now a consent order or a judgement by consent is undoubtedly based on an agreement of both parties where consent to the agreement must or should have been free in the first place. If the agreement upon which a consent order or judgement by consent is based, is vitiated bv any around recognized in equity as vitiating such free consent, such as fraud, mistake, total failure of consideration. (see *Huddesfield Banking Co v. Henry Lister* [1895] 2 Ch 273 and the cases cited therein), then such a perfected consent order or judgement by consent could be set aside in a fresh action filed for the purpose. Grounds which would vitiate such free consent should also include misrepresentation, coercion. and undue influence and other grounds in equity.

[59] In *Tio Chee Hing v. Tractors Malaysia Bhd* [1972] CLJU 157; [1972] 1 LNS 157; [1973] MLJ 66, Gill FJ, in delivering the judgment of the court, held that:

> ... So long as the judgment stands, no one who was a party in those proceedings can re-open the matter.
>
> See *Hill v. Hill* [1954] P 261; [1954] 1 All ER 491. That is what plaintiff is trying to do in this case. I can see no ground for his doing so since the judgment was the result of his admission. He was fully cognisant of the proceedings and clearly bound by estoppel from litigating the same matter in a different form or guise. A judgment by consent or by default, operates as an estoppel between the parties and their privies: *Shaik Sahied bin Abdullah Bajarie v. Mootoo Carpen Chitty* [1910] 2 MC16.

A **[60]** The central issues to determine regarding the consent order are twofold: (i) whether the applicants, being non-parties to JR 31, can challenge the consent order in these proceedings; and (ii) whether the consent order, in view of the respondent's authority under the Street, Drainage, and Building Act (SDBA) 1974, is enforceable to require demolition of the
B interface wall.

[61] In cases where consent orders affect the rights of third parties, courts have generally held that such third parties must have had an opportunity to be heard. However, the applicants had full knowledge of JR 31 proceedings and chose not to intervene. Their failure to join the proceedings at an earlier
C stage weakens their claim to now challenge the consent order, especially in light of the order's finality as a judicially approved settlement.

[62] The principle against collateral attack asserts that a party cannot seek to undermine a final order or judgment through indirect proceedings (see the case of *Development & Commercial Bank Bhd v. Aspatra Corporation Sdn Bhd*
D *& Anor* [1996] 1 CLJ 141; [1995] 3 MLJ 472). The applicants' current application for judicial review appears to be a collateral attack on JR 31, where the applicants had the opportunity to raise their arguments but declined to do so. Thus, the applicants' challenge to the consent order is inconsistent with the principle of judicial finality.

E **[63]** The evidence presented reveals that the respondent did not conclusively determine that the interface wall posed an imminent danger, relying instead on complaints from Yoga and adherence to local guidelines. However, the respondent retained discretionary power to revoke approval if deemed necessary under the SDBA. The fact that the applicants paid fines
F for previous breaches and accepted temporary approval only reinforces the understanding that they were aware of the conditional nature of the respondent's tolerance for the interface wall. Hence, the consent order's enforcement aligns with the respondent's regulatory mandate to ensure compliance with local building requirements.

G **[64]** Given the applicants' failure to participate in JR 31 and their subsequent challenge to the consent order, this judicial review application constitutes a collateral attack on a valid and final judgment. The respondent's authority under the SDBA 1974 further supports the enforceability of the consent order, making it binding upon the applicants. Thus, the applicants'
H assertions of illegality are without merit. The consent order remains valid and enforceable, providing the respondent with lawful grounds to proceed with the demolition of the interface wall as per the stipulated terms.

I

Conclusion

[65] Considering the facts and legal arguments presented, this court concludes that the applicants have not substantiated their claim that the respondents acted unlawfully or outside the scope of their statutory authority in enforcing the consent order. The respondents, acting under the powers granted to them by the Street, Drainage, and Building Act 1974, were within their rights to revoke the temporary approval of the interface wall and to proceed with enforcement actions, including demolition, in line with their duty to ensure public safety and regulatory compliance.

[66] The applicants' attempt to challenge the consent order, despite their awareness of the proceedings in JR 31 and their choice not to intervene, constitutes an impermissible collateral attack on a final court-sanctioned agreement. This court emphasises that the principles of judicial finality and procedural integrity require parties affected by ongoing proceedings to assert their rights within the relevant action rather than through subsequent collateral challenges.

[67] In the absence of any legal error or procedural impropriety by the respondents, this court finds that the consent order should stand. Upholding the respondents' authority in this context reinforces the essential regulatory function of local authorities to manage building approvals and enforce conditions that promote public safety and orderly development. The respondents' actions in this case serve not only to uphold local regulatory statutes but also to ensure that judicial orders are respected and enforced without undue interference.

[68] Accordingly, this application is dismissed, and costs of RM2,000 are awarded to the first respondent and costs of RM3,000 to the second respondent.